

**SEMINOLE DOMESTIC VIOLENCE CODE  
TITLE 6A**

**INDEX**

Chapter 1	Code Provisions .....	1
Section 101.	Short Title, Purpose and Definitions. ....	1
Section 102.	Written Policies and Procedures.....	4
Section 103.	Criminal Domestic Abuse. ....	4
Section 104.	Penalties.....	4
Section 105.	Investigating of Domestic Abuse Complaints .....	5
Section 106.	Mandatory Arrest.....	5
Section 107.	Duties of Law Enforcement Officer .....	6
Section 108.	Filing Complaints .....	7
Section 109.	Liability of Law Enforcement Officers .....	7
Section 110.	Notice of Rights.....	7
Section 111.	Reporting Statistics.....	8
Section 112.	Reporting By Officer .....	8
Section 113.	Protection Orders.....	8
Chapter 2	Forms .....	13
Section 201.	Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order.....	13
Section 202.	Temporary Protection Order and Order to Show Cause.....	17
Section 203.	Domestic Abuse Protection Order .....	22
Section 204.	Motion for Order to Show Cause .....	25
Section 205.	Order to Show Cause.....	26
Section 206.	Motion to Vacate Protection Order .....	27
Section 207.	Order.....	28
Chapter 3	Law Enforcement Officer Protocol.....	29
Section 301.	Responding Officer Protocol. ....	29
Section 302.	On-Scene Investigation.....	29
Section 303.	Identification and Collection of Evidence. ....	30
Section 304.	Notice of Victim's Rights. ....	30
Section 305.	If No Arrest Can Be Made.....	30
Section 306.	Report Writing.....	31
Chapter 4	Seminole Nation Prosecution Procedures For Domestic Violence Cases .....	32
Section 401.	Policy.....	32
Section 402.	Procedure.....	32
CHAPTER 5	.....	37
ELDER ABUSE PREVENTION AND PUNISHMENT CODE	.....	37
Section 501.	DEFINITIONS.....	37
Section 502.	Mandatory Arrest Provision.....	37
Section 503.	Role of the Court in Regard to Mandatory Arrest Provision (Section 2 above)..	38
Section 504.	Order for Protection. ....	39
Section 505.	Hearing on Application, Notice.....	40
Section 506.	Relief by the Court.....	40
Section 507.	Standing Order for Protection.....	41

Section 508. Service of Order for Protection.....	41
Section 509. Assistance of Public Safety in Service or Execution. ....	41
Section 510. Right to Apply for Relief. ....	41
Section 511. Modification of Order for Protection. ....	42
Section 512. Copy to Law Enforcement Agency.....	42
Section 513. Violation of an Order for Protection. ....	42
Section 514. Reporting Abuse of Elder; Penalty for Failure to Report. ....	42
Section 515. Reports. ....	43
Section 516. Immunity.....	43
Section 517. Contents of Report. ....	43
Section 518. Reimbursement. ....	44
Section 519. Non-Disclosure. ....	44
Section 520. Follow-up Assessment. ....	44
Section 521. Appellate Review.....	44

**TITLE 6A**  
**DOMESTIC VIOLENCE CODE**

**CHAPTER 1 CODE PROVISIONS**

Section 101. Short Title, Purpose and Definitions.

(A) This Title shall be entitled "The Domestic Violence Code" (Code).

(B) The purpose of this code is to protect all persons, especially women, children, the elderly, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Seminole Nation District Court, from all forms of domestic abuse as defined in this section. This code shall be liberally construed and interpreted in order to achieve its purpose. This code embodies the intent of the Nation to promote the following goals:

(1) To recognize the illegal nature of domestic abuse;

(2) To provide victims of domestic abuse with the maximum protection from abuse that can be made available under law;

(3) To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family setting, or others with whom the abuser has continuing contact;

(4) To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;

(5) To facilitate the reporting of domestic abuse;

(6) To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and

(7) To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the individual, the family, culture, and society.

(C) These definitions shall be liberally construed so as to protect all persons who are subjected to domestic abuse. This Title also incorporates all definitions that may be contained in Title 6, Criminal Offenses. As used in this section, and subject to additional definitions contained in Title 6:

(1) Domestic Abuse - Domestic abuse means the infliction of any of the following acts upon a victim as defined in Section 101(C)(1):

(a) Assault - Purposely or knowing causing bodily injury to another, negligently causing bodily injury to another with a weapon, or purposely or knowingly causing reasonable apprehension of bodily injury to another.

(b) Threatening - Words or conduct which place another in fear of bodily harm or property damage;

(c) Coercion - Compelling an unwilling person, through force or threat of force, to:

i) engage in conduct which the person has a right to abstain from;

ii) abstain from conduct which the person has a right to engage in;

(d) Confinement - Compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

(e) Court – Shall mean the District Court of the Seminole Nation of Oklahoma;

(f) Damage to property - Damaging the property of another;

(g) Emotional Abuse - Using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;

(h) Harassment - Conduct which causes emotional alarm and distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity. Examples of harassing conduct include, but are not limited to the following:

i) unwelcome visiting or following a person;

ii) unwelcome sexual propositioning, references to body functions or attributes, or other comments of a sexual nature;

iii) unwelcome communications, made by phone or by other methods, including electronic communications, containing intimidating, taunting, insulting, berating, humiliating, offensive, threatening, or violent language; or

iv) unwelcome lingering around the home, school, or work place of a person;

(i) Sexual Abuse - Any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person's consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or while incapacitated while under the effects of alcohol or any controlled or illegal substance(s). Consent cannot be obtained from a minor under any circumstance; and

(j) Stalking - The intentionally and repeatedly following or harassing of another person, making credible threats, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm.

(k) Other conduct - Any other conduct that constitutes an offense or a tort under the law of the Seminole Nation. Domestic Abuse does not mean a victim's act of self-defense made in reasonable response to an abuser's act of domestic abuse.

(2) Victim - Means any of the following persons who have been directly affected by domestic abuse as defined in Section 101(C)(1):

(a) Any member or former member of the abuser's household or immediate residence area;

(b) Any person involved in, or formerly involved in, an intimate relationship with the abuser;

(c) Any person who interacts with the abuser in an employment, academic, recreational, religious, social or other setting;

(d) Any offspring of the abuser;

(e) Any relative of the abuser;

(f) Any elderly person; or

(g) Any vulnerable person. Examples of vulnerability which give rise to the protection of this code include, but are not limited to, emotional and physical disabilities and impairments.

(3) Abuser - Means any person who engages in conduct defined as domestic abuse under Section 101(C)(1) against any of the persons defined as victims under Section 101(C)(2).

(4) Protection Order - Means a court order that restrains the abuser from doing certain acts upon threat of penalty. Such an order may contain requirements to adjust the relationship of the parties and prevent further abuse. The term includes any emergency, temporary or domestic abuse protection orders issued by the court.

(5) Victims' Advocacy Specialist means the Office of Domestic Violence, or such other office designated by the Nation to work with domestic violence issues and provide related services.

(6) Social Services – means generally any agency or department of the Nation that can provide a specific service, including treatment, to a domestic violence victim or perpetrator.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 102. Written Policies and Procedures.

(A) Within ninety (90) days of approval of this code the Nation's Staff shall draft and present to General Council for approval; written policies and procedures for the prosecution of the crime of domestic abuse which will advance effective prosecution of the crime and maximize the protection and safety of the victims of domestic abuse and their children.

(B) Within ninety (90) days of approval of this code the Chief of Police shall draft and present to General Council for approval written protocol which each law enforcement officer is to follow in investigating the crime of domestic abuse, gathering and preserving evidence, making the arrest, and providing follow-up victim contact to maximize victim testimony at trial. In all aspects, the officer will assure the safety of the victim and children.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 103. Criminal Domestic Abuse.

(A) A person commits the offense of Criminal Domestic Abuse by:

(1) purposely or knowingly causing bodily injury to a family member or household member; or

(2) purposely or knowingly causing reasonable apprehension of bodily injury in a family member or household member.

(B) The term Domestic Abuse in this code shall mean any incident resulting in the abuse, assault, or the attempt or threats thereof, between family or household members. This does not include the reasonable discipline of a child by a person having that authority.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 104. Penalties.

The purpose of this code shall be to deter all family violence on the Seminole Nation and to promote the healing of families whenever possible. In addition to any other criminal punishment available and in addition to any other civil penalty, judicial discretion may be used in applying the following penalties where degree or severity of the offense warrants; however, no penalty for domestic abuse shall be less than one of the following penalties:

(A) A person convicted of domestic abuse shall be imprisoned for a term of not less than (10) day nor more than sixty (60) days, and may be fined an amount not to exceed \$1,250.00 and shall be required to pay the cost of incarceration. The Court shall require

mandatory counseling as part of the sentence. Such counseling may include, but is not limited to: alcohol/drug abuse, anger control, and family counseling; or

(B) A person convicted of domestic abuse shall be imprisoned for a term of not less than twenty (20) days nor more than one hundred twenty (120) days and a may be fined an amount not to exceed \$2,500.00 and shall be required to pay the cost of incarceration. The Court shall also require mandatory counseling as described under Subsection (A); or

(C) A person convicted of domestic abuse shall be imprisoned for a term of not less than ninety (90) days nor more than one hundred and eighty (180) days, and may be fined an amount not to exceed \$5,000.00 and shall be required to pay the cost of incarceration. The Court shall also require mandatory counseling as described under Subsection (A).

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 105. Investigating of Domestic Abuse Complaints**

(A) Complaints of Elderly Abuse - When investigating complaints of elder abuse or neglect the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and all domestic violence response procedures should be followed and in accordance with Chapter 5 herein. If the victim is a "vulnerable adult" a report to Social Services shall be required.

(B) Complaints of Abuse Perpetrated by a Minor Child - When investigating complaints of abuse by a minor child the complaint shall be investigated and treated the same as any other domestic violence complaint. A custodial arrest should be made and procedures for lodging a minor shall be followed.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 106. Mandatory Arrest**

(A) A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe:

- (1) that an assault has occurred within the previous 72 (seventy-two) hours;
- (2) an assault has occurred and has resulted in bodily injury to the victim whether the injury is immediately visible to the officer or not; and/or
- (3) that any physical action has caused another person reasonably in all probability serious bodily injury or death, and the victim is the person's family member, household member or former household member.

(B) If the domestic violence incident is Non-Alcohol Related any person arrested under Section 105(A) of this code shall be held without bail, in custody of the Police Department

for a period not to exceed twelve (12) hours, as a mandatory cooling down period, provided that such person has posted bond.

(C) If the domestic violence incident is Alcohol Related any person arrested under Section 105(A) of this code shall be held for a period not to exceed twenty-four (24) hours. This shall also be construed as a cooling down period, provided that such person has posted bond.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 107. Duties of Law Enforcement Officer

(A) A law enforcement officer who responds to a domestic abuse call shall use all reasonable means to protect the victim and children and prevent further violence, including but not limited to:

- (1) Taking action necessary to assure the safety of the victims and children;
- (2) Confiscating any weapon involved in the alleged domestic abuse;
- (3) Transporting or obtaining transportation of the victim and children to a shelter;
- (4) Assisting the victim in removing essential personal effects;
- (5) Assisting the victim and children in obtaining medical treatment including transportation to a medical facility;
- (6) Giving the victim immediate and adequate notice of rights, remedies and services available.

(B) If a law enforcement officer receives cross complaints of domestic abuse from two or more opposing persons, the officer shall arrest the primary aggressor. In determining whether a person was the primary aggressor, the officer shall consider:

- (1) The Seminole Nation's intent to protect victims of domestic abuse;
- (2) The history of domestic abuse between the persons involved;
- (3) The relative severity of the injuries inflicted or serious threats creating fear of bodily injury;
- (4) The likelihood of future injuries to each person;
- (5) Whether one of the persons acted in self-defense; and
- (6) The officer's experience in handling domestic abuse cases. If the officer determines that one person was the primary aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury.



(C) A law enforcement officer shall not threaten the arrest of all parties to discourage requests by any party for intervention from any law enforcement.

**[[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 108. Filing Complaints**

(A) The officer making the arrest under this code shall sign a complaint against the alleged abuser on behalf of the Seminole Nation. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(B) The preliminary report shall be done in eight (8) hours.

(C) The final and complete report shall be completed in forty-eight (48) hours.

(D) The victim may be subpoenaed as the primary witness for the prosecution.

(E) If the abuser and victim are husband and wife, the Communication Privilege shall not apply in Domestic Abuse cases.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 109. Liability of Law Enforcement Officers**

(A) A law enforcement officer shall not be held liable in any civil proceeding for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this code arising from an alleged incident of domestic violence brought by any party to the incident.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 110. Notice of Rights**

(A) The officer shall tell the victim of abuse whether a shelter for victims of abuse is available in the community and give the victim immediate notice of legal rights and remedies that are accessible to. The notice should include the victims right to the following:

- (1) an order restraining the abuser from further acts of violence;
- (2) an order directing the abuser to leave the household;
- (3) an order preventing the abuser from entering the residence, school, workplace, or place of business;
- (4) an order awarding custody or visitation with any minor children;

(5) an order directing the abuser to pay support to the victim and minor children when appropriate;

(6) an order prohibiting the abuser from harassing, annoying, telephoning, contacting, or otherwise communicating with you, either directly or indirectly;

(7) an order prohibiting the abuser from using or possessing a firearm or other weapon specified by the Court. The forms you need to obtain an order for protection can be obtained from the Seminole Nation District Court Clerk.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 111. Reporting Statistics**

(A) A record of all reported cases of domestic abuse shall be kept by the police department. A semiannual report shall be made by the police department with the exact number of domestic abuse cases handled in this certain time frame. This will be public information and available to all agencies of the Nation.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 112. Reporting By Officer**

(A) When an officer is called to the scene of a domestic abuse report and does not make an arrest he or she shall file a written report as to the reasoning for not making an arrest. This report will be filed with the officer's supervisor.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 113. Protection Orders**

(A) Who may file a petition

(1) A person may seek a protection order:

(a) for herself or himself;

(b) on behalf of a minor child;

(c) a minor child

(d) on behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;

(e) on behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; where prior consent was obtained from the client, or when consent is not necessary or applicable because of the client's incapacity; or

(2) If a petition is filed by or on behalf of a minor child, the Court shall appoint a guardian ad litem to represent the child's interests. Additionally, if the petition involves the child's parent or legal guardian, the Court shall refer the matter to the Seminole Nation's Indian Child Welfare Department.

(3) The Court shall, within eight (8) hours, or as soon as otherwise possible, give notice to the Victims' Advocacy Specialist of all petitions for protective orders.

(B) Standard of proof, defenses

(1) A court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

(2) A petitioner shall not be denied relief under this section because:

(a) the petitioner used reasonable force in self defense against the respondent;

(b) the petitioner has previously filed for a protection order and subsequently reconciled with the respondent;

(c) the petitioner has not filed for a divorce; or

(d) the petitioner or the respondent is a minor.

(3) The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Code:

(a) intoxication

(b) spousal immunity; or

(c) provocation.

(C) Temporary protection orders, ex parte

(1) Petition, Motion and Order

(a) Upon the filing of a Petition for Domestic Abuse Protection Order and Motion for Temporary Protection order the court shall immediately grant or deny the petitioner's Motion for Temporary Protection Order without a hearing or

notice to the respondent. The Court shall grant the motion if it determines that an emergency exists.

i) A petitioner shall demonstrate an emergency by showing that: (a) the respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or (b) the petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection.

ii) Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.

iii) The Temporary Protection Order may include any relief permitted by Section 114(C)(2) of this Code and any other relief necessary to prevent further domestic abuse.

iv) The Temporary Protection Order shall direct the respondent to appear at a hearing to show cause why the Court should not issue a Domestic Abuse Protection Order.

v) Upon issuing the Temporary Protection Order, the court shall immediately provide for notice to the respondent and notify law enforcement of the order.

(b) If the court finds that an emergency does not exist, the court shall deny the petitioner's Motion for a Temporary Protection Order and schedule a hearing on the Petition for Domestic Abuse Protection Order.

i) The court shall schedule the hearing within fifteen (15) days (excluding holiday and weekends) of the petition filing.

ii) The court shall provide for notice to the Respondent according to 7A of the Seminole Nation Code of Laws.

(c) The Court shall give a Motion for Temporary Protection Order priority over all other docketed matters and shall issue an order granting or denying the motion within 72 hours.

(2) Domestic Abuse Protection Order Relief

(a) Respondent shall not abuse, harass, or threaten the Petitioner, or commit any other domestic abuse;

(b) Respondent shall immediately leave Petitioner's residence;

- (c) Respondent shall stay at least 100 yards away from the Petitioner's residence, place of employment, school, or any other places as ordered to do so;
- (d) Respondent shall not contact Petitioner, in person, in writing, or by telephone;
- (e) Petitioner shall have custody of the minor children;
- (f) Respondent shall be permitted to visit with the children as scheduled and supervised by the Seminole Nation Social Services Department;
- (g) Respondent shall pay to Petitioner the amount ordered by the Court for support of their minor children;
- (h) Respondent shall return to Petitioner any items ordered by the Court;
- (i) Respondent shall not sell, remove, hide, destroy or damage any property owned by Petitioner or by both parties jointly;
- (j) An Officer of the Seminole Nation Lighthorse Police Department shall accompany Petitioner to a residence occupied by the Respondent to:
  - i) obtain physical custody of the child(ren) listed on the Domestic Abuse Protection Order;
  - ii) collect personal belongings listed on the Domestic Abuse Protection Order;
  - iii) ensure that Respondent leaves the parties residence.
- (k) Respondent shall pay to Petitioner the amount ordered by Court for the following:
  - i) lost earnings
  - ii) property taken or damaged
  - iii) travel expenses
  - iv) other expenses
- (l) Respondent shall participate in domestic abuse counseling;
- (m) Petitioner shall participate in domestic abuse counseling;
- (n) Respondent shall participate in alcohol counseling;

(o) Respondent shall pay to this Court the costs of this proceeding, in cash or a money order made out to Seminole Nation District Court;

(p) Other relief as ordered by the Court.

(3) Hearing, Domestic Abuse Protection Order

(a) The court shall schedule a full hearing within fifteen (15) days (excluding holidays and weekends) after granting or denying a Temporary Protection Order.

i) The respondent may move the court to dissolve or modify any Temporary Protection Order within those fifteen (15) days.

ii) The respondent must give at least five (5) days notice of the motion to the petitioner. The court shall give priority to such motions.

(b) If the petitioner fails to appear at the hearing, the court may continue the hearing for up to fifteen (15) days, or dismiss the petition without prejudice. Any Temporary Protection Order shall remain in effect during the continuance.

(c) If the respondent fails to appear after receiving notice, the hearing shall go forward.

(d) If, after a hearing, the court finds by a preponderance of the evidence that the alleged domestic abuse occurred, the court shall issue a Domestic Abuse Protection Order. The Order may include the relief granted in any Temporary Protection Order and any additional relief that the court deems necessary.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

## CHAPTER 2 FORMS

**NOTE REGARDING FORMS: ALL FORMS CONTAINED IN THIS CHAPTER ARE MERELY EXAMPLES TO BE USED AS GUIDELINES, SUBJECT TO THE CIRCUMSTANCES OF INDIVIDUAL CASES.**

Section 201. Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order.

### SEMINOLE NATION DISTRICT COURT

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

#### **PETITION FOR DOMESTIC ABUSE PROTECTION ORDER AND MOTION FOR TEMPORARY PROTECTION ORDER**

I, \_\_\_\_\_, am an enrolled member of the Seminole Nation residing within the territorial jurisdiction of the Seminole Nation of Oklahoma. I request that the Court grant a Domestic Abuse Protection Order based on the following:

1. The respondent is (\_\_\_\_\_) my spouse, (\_\_\_\_\_) my ex-spouse, (\_\_\_\_\_) my boyfriend/girlfriend, (\_\_\_\_\_) a family member, (\_\_\_\_\_) other (describe) \_\_\_\_\_.
2. Respondent has committed domestic abuse against me.
  - a. Approximate date most recent abuse occurred: \_\_\_\_\_.
  - b. Description of most recent abuse and, any destruction of property: \_\_\_\_\_  
\_\_\_\_\_.
  - c. Description of threats that caused me to fear that I was going to be hurt: \_\_\_\_\_  
\_\_\_\_\_.
  - d. Respondent has been abusing me for (Write in length of time): \_\_\_\_\_  
\_\_\_\_\_.
  - e. In the past the respondent has committed the following acts of physical and mental abuse against me (list approximate dates and describe): \_\_\_\_\_  
\_\_\_\_\_.
  - f. I have suffered emotional and physical injuries as a result of Respondent's violence (Describe injuries): \_\_\_\_\_.

3. Respondent and I have been involved in the following court cases (Check all that apply, list date(s) any resulting court order, and explain):

- a. ( ) Criminal Prosecution: \_\_\_\_\_.
- b. ( ) Divorce: \_\_\_\_\_.
- c. ( ) Other petition (s) for protection from abuse: \_\_\_\_\_.
- d. ( ) Custody: \_\_\_\_\_.
- e. ( ) Other: \_\_\_\_\_.

4. Respondent and I are the parents of the following children (list names, dates of birth, and tribal affiliation): \_\_\_\_\_. The children are currently in ( ) my ( ) Respondents' physical custody.

5. I am the parent of the following children, who are not Respondent's children: \_\_\_\_\_.

6. Respondent ( ) has ( ) has not abused the above children (Describe any child abuse): \_\_\_\_\_.

7. I have suffered emotional and physical injuries as a result of Respondent's abuse. Unless Respondent is restrained, such abuse will continue.

### **MOTION FOR TEMPORARY PROTECTION ORDER**

( ) I also need a Temporary Protection Order to protect me until a hearing can be held on my petition. I fear that if Respondent finds out about this court case, Respondent will get angry and further injure me before the court can issue a Domestic Abuse Protection Order.

( ) I do not need a Temporary Protection Order.

### **REQUESTED RELIEF**

1. ( ) Order Respondent not to abuse, harass, or threaten me, or commit any other domestic abuse.

2. ( ) Order Respondent to immediately leave my residence.

3. ( ) Order Respondent to stay at least 100 yards from the following places (DO NOT LIST ANY ADDRESS IF REVEALING IT WOULD FURTHER ENDANGER YOU):

a. ( ) My residence: \_\_\_\_\_.

b. ( ) My place of employment: \_\_\_\_\_.



- c. ( ) School attended by me or my children: \_\_\_\_\_.
- d. ( ) Other place(s): \_\_\_\_\_.
4. ( ) Order Respondent not to contact me in person, in writing, or by telephone.
5. ( ) Award me temporary custody of our children and order Respondent not to have contact with them until a court hearing.
6. ( ) After a hearing, allow Respondent to visit with the children only on the following day(s) of the week: \_\_\_\_\_ at the following place(s): \_\_\_\_\_ and time(s) \_\_\_\_\_ under the supervision of the following person(s): \_\_\_\_\_.
7. ( ) Order Respondent to pay \$ \_\_\_\_\_ per month/pay period (circle one) for the support of our minor children.
8. ( ) Order Respondent to compensate me for the following expenses, incurred as a result of the abuse:
- a. Lost earnings: \$\_\_\_\_\_.
- b. Property taken or damaged: \$\_\_\_\_\_.
- c. Travel expense: \$\_\_\_\_\_.
- d. Other: \$\_\_\_\_\_.
9. ( ) Order Respondent to return to me the following items of my property (example: vehicle, clothing, identification documents):
10. ( ). Order Respondent not to sell, remove, hide, destroy or damage any property owned by me or by the two of us jointly.
11. ( ) Direct a police officer to accompany me to a residence occupied by the Respondent to:
- a. ( ) obtain physical custody of the children;
- b. ( ) collect my personal belongings;
- c. ( ) require Respondent to leave the residence.

12. (\_\_\_\_\_) Order Respondent to attend alcohol/domestic abuse (circle one or both) counseling.

13. (\_\_\_\_\_) Other relief, as follows: \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Petitioner, Pro, se

\_\_\_\_\_  
Witness

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 202. Temporary Protection Order and Order to Show Cause

**SEMINOLE NATION DISTRICT COURT**

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

**TEMPORARY PROTECTION ORDER AND ORDER TO SHOW CAUSE**

THIS COURT has reviewed the Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order in this case. The Court finds that there is good cause to believe that Petitioner and/or others are in imminent danger of harm from Respondent. To prevent further harm a Temporary Protection order should be issued without notice to Respondent.

**THEREFORE, THIS COURT ORDERS AS FOLLOWS:**

1. ( ) Respondent shall not abuse, harass, or threaten the Petitioner, or commit any other domestic abuse;
2. ( ) Respondent shall immediately leave Petitioner's residence;
3. ( ) Respondent shall stay at least 100 yards away from the following places (DO NOT LIST ANY ADDRESS WHICH WOULD FURTHER ENDANGER THE PETITIONER):
  - a. ( ) Residence: \_\_\_\_\_.
  - b. ( ) Place of employment: \_\_\_\_\_.
  - c. ( ) School attended by Petitioner or Petitioner's Children: \_\_\_\_\_  
\_\_\_\_\_.
  - d. ( ) Other place(s): \_\_\_\_\_.

4. ( ) Respondent shall not contact Petitioner, in person, in writing, or by telephone.

5. ( ) Until a hearing is held in this matter, Petitioner shall have temporary custody of the following minor children: \_\_\_\_\_.

6. ( ) Respondent shall return to Petitioner the following items: \_\_\_\_\_.

7. ( ) Respondent shall not sell, remove, hide, destroy or damage any property owned by Petitioner or by both parties jointly.

8. ( ) An Officer of the Seminole Nation Lighthorse Police Department shall accompany Petitioner to a residence occupied by the Respondent to:

a. ( ) obtain physical custody of the children listed in paragraph 5 above;

b. ( ) collect personal belongings listed in paragraph 6 above;

c. ( ) ensure that Respondent leaves the parties residence located at: \_\_\_\_\_.

9. ( ) Other relief, as follows: \_\_\_\_\_.

WARNING: THIS IS AN OFFICIAL COURT ORDER. IF YOU VIOLATE THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

IT IS FURTHER ORDERED that Respondent, \_\_\_\_\_ must appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_:\_\_\_\_\_. M., to show cause why this protection order should not continue in full force.

SO ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUDGE, Seminole Nation District Court

I hereby certify that I personally served a true copy of the foregoing on the Respondent this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name

## EMERGENCY PROTECTION ORDER

1. This EMERGENCY PROTECTION ORDER will expire at 5:00 p.m. on (insert date of next court day) \_\_\_\_\_.

2. A more permanent protection order must be requested at the Seminole Nation District Court.

3. Reasonable grounds appear that an immediate danger of domestic abuse exists and that this order should be issued against: (Name): \_\_\_\_\_.

a. (\_\_\_\_\_) who must not abuse, harass, threaten, or commit any other acts of domestic abuse against (Person to be protected): \_\_\_\_\_.

b. (\_\_\_\_\_) who must move out immediately from (residence): \_\_\_\_\_.

c. (\_\_\_\_\_) who must stay 100 yards away from the above person and place.

4. (\_\_\_\_\_) ( Person to be protected) \_\_\_\_\_ is given temporary custody of the following minor children (names, dates of birth): \_\_\_\_\_  
\_\_\_\_\_ hereby certify that ( Name of Judge): \_\_\_\_\_  
transmitted the above Emergency Protection Order to me by telephone/facsimile (circle one) this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_:\_\_\_\_.M.

\_\_\_\_\_  
(Print name of Officer)

\_\_\_\_\_  
(Signature of Officer)

WARNING: THIS IS AN OFFICIAL COURT ORDER. IF YOU VIOLATE THIS ORDER THE COURT MAY FIND YOU IN CONTEMPT OF COURT. YOU MAY ALSO BE ARRESTED AND PROSECUTED FOR THE CRIME OF INTERFERING WITH JUDICIAL PROCEEDINGS AND ANY OTHER CRIME YOU MAY HAVE COMMITTED IN DISOBEYING THIS ORDER.

## APPLICATION FOR EMERGENCY PROTECTION ORDER

1. (Name): \_\_\_\_\_ has provided the following information:

a. PERSON (S) TO BE PROTECTED: \_\_\_\_\_.

b. PERSON TO BE RESTRAINED: \_\_\_\_\_.

(i) Sex: M \_\_\_\_\_ F \_\_\_\_\_

(ii) Ht: \_\_\_\_\_

(iii) WT: \_\_\_\_\_

(iv) Hair Color: \_\_\_\_\_

(v) Eye Color: \_\_\_\_\_

(vi) Age: \_\_\_\_\_

(vii) Scars/Marks \_\_\_\_\_

c. The person to be restrained is related to the person to be protected as a  
( ) spouse/ex-spouse, ( ) boy/girlfriend, ( ) family member, ( ) other: \_\_\_\_\_

d. The events that caused the protection person to fear immediate and present  
danger of domestic abuse are (Give facts and dates. Specify any threats): \_\_\_\_\_

e. ( ) The person to be protected lives with the person to be restrained  
and requests an order that the restrained person move out immediately from the following  
resident: \_\_\_\_\_

f. ( ) The person to be protected has minor children in common with  
the person to be restrained and requests that she/he be granted temporary custody over those  
children because of the facts alleged in item 1 (d). No custody order currently exists.

2. ( ) The person to be restrained will be arrested and taken into custody.

3. A phone call was made to (name of Judge): \_\_\_\_\_, on  
(date): \_\_\_\_\_ at (time): \_\_\_\_\_.

The above judge granted the Emergency Protection Order that follows.

BY: \_\_\_\_\_

(Print name of Officer)

Agency: \_\_\_\_\_

Telephone No. \_\_\_\_\_

ID. No. \_\_\_\_\_

### **APPLICATION FOR SERVICE OF PROCESS**

#### **PETITIONER:**

Your name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Residence location: \_\_\_\_\_

Phone: Home \_\_\_\_\_ Work \_\_\_\_\_

Any other information needed for the Court to reach you: \_\_\_\_\_

#### **RESPONDENT:**

Description and address of Respondent (the abuser): \_\_\_\_\_

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Residence location (draw map and attach, if necessary): \_\_\_\_\_

Describe the Respondent's appearance: Height \_\_\_\_\_, Weight \_\_\_\_\_,

Any identifying marks: \_\_\_\_\_

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 203. Domestic Abuse Protection Order

**SEMINOLE NATION DISTRICT COURT**

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

**DOMESTIC ABUSE PROTECTION ORDER**

This court, having read the Petition for Domestic Abuse Protection Order, and having determined that Respondent received proper and timely notice of the hearing, heard this matter on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. This Court finds that Petitioner has proven that allegations of domestic abuse by a preponderance of the evidence. Therefore, This Court orders as follows:

1. (\_\_\_\_\_) Respondent shall not abuse, harass, or threaten the Petitioner, or commit any other domestic abuse;
2. (\_\_\_\_\_) Respondent shall immediately leave Petitioner's residence;
3. (\_\_\_\_\_) Respondent shall stay at least 100 yards away from the following places (Do Not List any Address which would further endanger the Petitioner):
  - a. (\_\_\_\_\_) Residence: \_\_\_\_\_.
  - b. (\_\_\_\_\_) Place of employment: \_\_\_\_\_.
  - c. (\_\_\_\_\_) School attended by Petitioner or Petitioner's Children: \_\_\_\_\_  
\_\_\_\_\_.
  - d. (\_\_\_\_\_) Other places: \_\_\_\_\_.



4. ( ) Respondent shall not contact Petitioner, in person, in writing, or by telephone.

5. ( ) Petitioner shall have custody of the following minor children:

6. ( ) Respondent shall be permitted to visit with the children only on the following day(s): \_\_\_\_\_ at the following places(s) \_\_\_\_\_ and time(s) \_\_\_\_\_ under the supervision of the following person(s) \_\_\_\_\_.

7. ( ) Respondent shall pay to Petitioner the following amount for the support of their minor children: \$ \_\_\_\_\_ per \_\_\_\_\_; these payments shall be made as follows: \_\_\_\_\_.

8. ( ) Respondent shall return to Petitioner the following items: \_\_\_\_\_.

9. ( ) Respondent shall not sell, remove, hide, destroy or damage any property owned by Petitioner or by both parties jointly.

10. ( ) An Officer of the Seminole Nation Lighthorse Police Department shall accompany Petitioner to a residence occupied by the Respondent to:

a. ( ) obtain physical custody of the children listed in paragraph 5 above,

b. ( ) collect personal belongings listed in paragraph 8 above;

c. ( ) ensure that Respondent leaves the parties residence located at :

11. ( ) Respondent shall pay to Petitioner the following amounts, as compensation for expenses incurred as a result of the abuse:

a. Lost earnings: \$ \_\_\_\_\_

b. Property taken or damaged \$ \_\_\_\_\_

c. Travel expenses: \$ \_\_\_\_\_

12. ( ) Respondent shall participate in domestic abuse counseling at \_\_\_\_\_  
\_\_\_\_\_ for \_\_\_\_\_ weeks/months.

13. ( ) Petitioner shall participate in domestic abuse counseling at \_\_\_\_\_  
\_\_\_\_\_ for \_\_\_\_\_ weeks/months.

14. ( ) Respondent shall participate in alcohol counseling at \_\_\_\_\_  
\_\_\_\_\_ for \_\_\_\_\_ weeks/months.

15. ( ) Respondent shall pay to this Court the costs of this proceeding, \$\_  
\_\_\_\_\_, in cash or a money order made out to: \_\_\_\_\_.

16. ( ) Other relief, as follows: \_\_\_\_\_.

This order shall be effective for \_\_\_\_ years \_\_\_\_ months from the date of its entry.

IT IS SO ORDERED, ADJUDGED AND DECREED THIS \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE, Seminole Nation District Court

I hereby certify that I personally served a true copy of the foregoing on  
\_\_\_\_\_ the Respondent this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NAME

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 204. Motion for Order to Show Cause

**SEMINOLE NATION DISTRICT COURT**

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

**MOTION FOR ORDER TO SHOW CAUSE**

COMES NOW PETITIONER, \_\_\_\_\_, and  
moves the Court for an Order requiring Respondent, \_\_\_\_\_  
\_\_\_\_\_, to show cause why he/she should not be held in contempt for violating the Protection  
Order entered on the \_ day of \_\_\_\_\_, 20\_\_.

As grounds for this motion, Petitioner states that Respondent violated the Protection Order in the following manner (describe how Respondent violated the order. Refer to specific paragraph numbers in the order, and then state what Respondent did to violate that part of the order, and the date(s) and time(s) of the violation(s): \_\_\_\_\_).

Respondent may be served at (describe where he or she may be found and attach a map if necessary): \_\_\_\_\_.

WHEREFORE Petitioner, \_\_\_\_\_, asks this Court for an Order requiring Respondent, \_\_\_\_\_, to show cause why this Court should not hold him or her in contempt.

WITNESS

---

WITNESS

Respectfully submitted,

\_\_\_\_\_  
(PETITIONER)

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 205. Order to Show Cause

**SEMINOLE NATION DISTRICT COURT**

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

**ORDER TO SHOW CAUSE**

To: \_\_\_\_\_

YOU ARE ORDERED TO APPEAR before this Court on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .M. to show cause why you should not be held in contempt for  
violating the Protection Order entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Petitioner has set forth the alleged violation(s) in the Motion to Show Cause served upon  
you with this order.

DATED this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUDGE, Seminole Nation District Court

I hereby certify that I personally served a true copy of the foregoing on the Respondent  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NAME

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 206. Motion to Vacate Protection Order

**SEMINOLE NATION DISTRICT COURT**

PETITIONER, )  
 )  
V. ) Case No. \_\_\_\_\_  
 )  
RESPONDENT. )

**MOTION TO VACATE PROTECTION ORDER**

COMES NOW PETITIONER, \_\_\_\_\_, and moves the Court to vacate the protection order entered on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

AS grounds for this Motion, Petitioner states that the circumstances that caused her or him to request a protection order have changed in the following manner (describe why you no longer need the order):

(\_\_\_\_\_) Respondent completed domestic abuse counseling at on \_\_\_\_\_ (list dates)

(\_\_\_\_\_) Respondent completed substance abuse counseling at on \_\_\_\_\_ (list dates).

(\_\_\_\_\_) Other: \_\_\_\_\_.

THEREFORE, I no longer feel that I need protection from Respondent and request that the Courts vacate the Protection Order entered against Respondent.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

Respectfully submitted,

\_\_\_\_\_  
(PETITIONER)

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 207. Order

**SEMINOLE NATION DISTRICT COURT**

PETITIONER,	)	
	)	
V.	)	Case No. _____
	)	
RESPONDENT.	)	

**ORDER**

THIS COURT, having considered Petitioner's Motion to Vacate Protection Order entered by this Court on the \_\_ day of \_\_\_\_\_, 20\_\_, and having heard the parties' arguments as to why the Court should vacate the order, hereby ORDERS that the Petitioner's Motion is \_\_\_\_\_.

---

JUDGE, Seminole Nation District Court

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

## **CHAPTER 3 LAW ENFORCEMENT OFFICER PROTOCOL**

### **Section 301. Responding Officer Protocol.**

- (A) The responding officer(s) shall have the dispatcher request "back up" assistance.
- (B) Responding officer(s) shall approach the scene as a criminal investigation. Officers should use appropriate precautionary procedures when approaching and entering the scene.
- (C) Upon arrival, officer(s) shall separate all parties involved. Identify and secure weapons if any.
- (D) Officers should determine the need for medical care.
- (E) Officer(s) should attempt to provide for the safety and care of children when necessary. Determine if the Victims' Advocacy Specialist and/or social services is needed at the scene. The Victims' Advocacy Specialist shall be notified whenever an officer responds to a domestic violence situation.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

### **Section 302. On-Scene Investigation.**

- (A) The officer(s) shall conduct a thorough criminal investigation.
- (B) The officer(s) shall interview the victim, suspect and other witnesses, including children as fully as circumstances allow. Children and other witnesses should be interviewed separately from the suspect, and victim.
- (C) In order to respond effectively, the officer should ask the victim questions such as the following:
  - (1) How often has this happened?
  - (2) What was the worst incident?
  - (3) What weapons were used?
  - (4) Has the suspect ever been arrested?
  - (5) When was the last time you were treated by a doctor for injuries inflicted by the suspect?
  - (6) Has the suspect been following, calling, or threatening you?

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 303. Identification and Collection of Evidence.

- (A) Document spontaneous or excited utterances.
- (B) Gather statements from the parties and witnesses.
- (C) Document injuries - both visible and complained of.
- (D) Note the victim's general appearance.
- (E) Photograph any injuries.
- (F) Photograph the scene and weapons and objects used as weapons.
- (G) Complete a "body map" showing all marks, bruises, injuries, etc.
- (H) Weapons should be tagged and preserved for evidence.
- (I) Officer shall request the tape recording of the initial call (if available) be held and tagged for evidence.
- (J) Officer(s) shall determine what crimes they have probable cause to believe were committed and who committed them.
- (K) Officer(s) shall arrest the assailant whenever probable cause exists that the suspect committed a crime of domestic violence or other criminal offense.
- (L) Officer(s) should avoid making a physical arrest of the assailant in the presence of the victim.
- (M) Officer(s) should emphasize to the victim and the assailant that the criminal action is being initiated by the officers not the victim.
- (N) If the suspect has left the scene and cannot be located within a reasonable time, a warrant shall be obtained based on information and belief.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 304. Notice of Victim's Rights.

After conducting a thorough criminal investigation at a domestic violence scene officer(s) shall provide a written notice of rights to the victim.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 305. If No Arrest Can Be Made.



Officer(s) should encourage one party to leave and provide protection while essential property is collected in preparation for leaving and provide assistance with transportation whenever possible.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 306. Report Writing.**

- (A) When documenting a domestic violence response:
  - (1) The victim does not have to sign the report.
  - (2) The victim does not have to write a statement.
  - (3) The victim should not be asked if prosecution is desired.
  - (4) The domestic violence report shall include but is not limited to the following:
    - (a) Address, date and time of incident.
    - (b) Victim's name, address, telephone number, sex, race, date of birth.
    - (c) Suspect's name, address, telephone number, sex, race, date of birth.
    - (d) Witness name, address, telephone number, sex, race, date of birth.
    - (e) Name of person who called in the complaint.
    - (f) Relationship of victim and suspect.
    - (g) Alcohol or drug use.
    - (h) Narrative of incident.
    - (i) Description of injuries of victim.
    - (j) Description of weapon(s).
    - (k) Medical attention sought, where.
    - (l) Property damage.
    - (m) Officer's name, date, was arrest made.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

## **CHAPTER 4 SEMINOLE NATION PROSECUTION PROCEDURES FOR DOMESTIC VIOLENCE CASES**

### **Section 401. Policy.**

Like all other crimes, domestic violence is a violation of Nation's criminal laws and a crime against the Nation itself. As with all crimes, it is the duty of the prosecutor to decide whether a case will be prosecuted, and to what extent. It is often the case in many jurisdictions, that informal procedures are characteristic of domestic violence prosecutions, and frequently the outcome is controlled by the victims themselves. However, such practice often results in non-prosecution and the effect is that the pattern of domestic violence is only temporarily abated and is soon resumed by the aggressor. Victims are often intimidated or pressured by the defendant to drop the charges, only to see the abuse return soon after. Therefore, the cooperation and willingness of the victim in the prosecution of the offense is only one factor to be considered and will not be determinative of the prosecution of the case. However, understanding, respect, compassion and the victim's privacy will all be considered in each case.

It will be the policy of the Attorney General to work closely with the Lighthorse Police Department, Social Services Department and the Victims' Advocacy Specialist in addressing domestic violence issues. The prosecution of all domestic violence crimes shall be conducted within the framework and as mandated by Title 7A of the Seminole Nation Code of Laws and other applicable tribal laws.

In all cases where treatment of some form is required for an offender, that offender shall be required to report to the court on a regular monthly basis with proof of compliance with all prescribed treatment. Failure to do so shall result in a fine of not more than \$5,000.00 for each element of a treatment plan with which an offender has failed to comply. Failure to correct such noncompliance by the next court date shall be deemed a repeat offense subject to an additional fine.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

### **Section 402. Procedure.**

#### **(A) Initial Case Review.**

The Attorney General is only one of several offices that will be involved in domestic violence cases. Normally, initial contact and involvement with these situations shall be through the Lighthorse Police Department, Social Services, the Prosecutor and the Victims' Advocacy Specialist. Those cases that are referred by these agencies for criminal prosecution shall be coordinated by the Attorney General.

In all cases that are referred for prosecution, the respective agency should provide all available information regarding the situation. The Prosecutor, with the assistance of the respective agencies, shall compile all police reports, accusatory instruments, medical reports, incident reports, photographs, victim and witness statements, Protective Orders, past criminal

histories and all relevant evidence and information that may assist in the assessment and prosecution of the crime.

Early contact with the victims shall be scheduled through the Victims' Advocacy Specialist or caseworker in order to establish an atmosphere of trust and cooperation. In addition to reviewing the incident, and obtaining statements and other evidence, the prosecutor shall provide the victim with information about the court process and try to answer any questions that the victim may have. It shall be made clear to the victim that it is the Nation's case against the defendant and that while each case is different and has its own particular circumstances, decisions as to the ultimate prosecution of the case, plea bargaining, dismissal or withdrawal of charges are not decisions made by the victim. The victim will be informed of what shall be expected of him/her during the proceedings. The victim will be apprised of additional criminal and civil relief that may be available.

Following initial review of the case, and throughout the pendency of the proceedings as new information is learned, the prosecutor shall assess the possibility of need to amend the charges. In addition, past incidents of uncharged conduct shall be reviewed, occurring within the jurisdiction of the Court and within applicable statute of limitations, to determine if said offense could be provable as separate and new cases.

The appearance of the victim at all stages of the prosecution shall be secured by subpoena.

(B) Pre-Trial Procedure and Arraignment.

Pretrial release of all defendants shall be governed by the procedures as set forth by the Nation's Code. However, it is hereby the stated recommendation of the Attorney General that no defendant should be released on simply his/her own recognizance and that as a condition of said release, that no further contact be had with the victim. In the event following pretrial release, should there be any further incidents between the parties, the defendant should be immediately arrested and held for appearance before the District Court within the time proscribed by law. At such time, the Court will be apprised of the situation as well as all intervening factors and the recommendation of the prosecutor regarding release.

Orders of Protection shall be routinely sought from the Court if not already initiated prior to arraignment. The prosecutor will request that the Court explain to the victim and the defendant that the terms of the order are not amendable by either party.

The prosecutor shall determine if the victim will be participating and cooperating in the case. The remaining evidence shall be evaluated to determine the strength of the case. Either the Prosecutor or the Victims' Advocacy Specialist will discuss with the victim any reluctance to cooperate.

All victims not appearing for arraignment shall be contacted within five business days by the Prosecutor or the Victims' Advocacy Specialist to address any special problems or concerns of the victim.

If both parties were arrested, the evidence will be reviewed and evaluated to determine if one was the primary aggressor, whether violence was of a defensive nature, or whether one party has been routinely victimized by the other. If it so appears, the prosecutor will take whatever steps that justice requires, including amending the charges to reflect new evidence and recommending that the victimized party be referred to a victim's support group or other similar program in lieu of or in addition to other penalties.

(C) Plea Bargaining.

Above all else, it is the duty of the Attorney General to see that justice is achieved in any type of case. The enforcement of Nation's laws, prevention of future crimes, punishment of offenders, protection of victims and the public and restitution for victims are always paramount.

However, it is recognized that those ends may be achieved by several different methods. Each and every case is unique. Prosecution to the full extent of the law may not always result in justice being served. Therefore prosecution of a particular case must be tailored to those specific facts to see that justice is achieved.

Plea bargaining is a discretionary tool available to the prosecutor in the prosecution of crimes. Many factors must be considered including, but not limited to, the strength of the case, the sufficiency of evidence, and the impact on the victim in determining whether or not a plea bargain is justified under the circumstances. As stated, each and every case is unique. Depending on the situation, plea bargaining may be completely out of the question, it may allow for pleading only to the most severe crime charged, it may allow for pleading to a lesser offense charged, or leading to a lesser included offense. Plea bargaining also gives the prosecutor great latitude in tailoring sentences, punishments, treatment, conditions and other factors to a particular situation.

While the victim may be consulted, his/her desire for, or opposition to, plea bargain is not determinative.

Factors to consider in all stages of the prosecution are:

- (1) The continued safety and welfare of the victim;
- (2) Whether there have been other incidents not resulting in prosecution or other cases where the victim has dismissed charges;
- (3) The severity and frequency of past incidents;
- (4) Whether or not former spouses or partners have been subjected to similar abuse;
- (5) The presence or use of weapons;
- (6) Substance abuse;

- (7) Forcible sexual acts, stalking, harassment, homicidal threats, assault, intimidation, violent jealousy, or menacing;
- (8) The control by the defendant over the victim's life and daily routine;
- (9) The victim's mental state;
- (10) The defendant's mental state;
- (11) Violence or threats towards other family members, police officers or bystanders;
- (12) Bizarre or anti-social behavior;
- (13) Prior domestic violence convictions;
- (14) Violation of any protective orders.

(D) Case Dismissal.

If the victim absolutely refuses to cooperate and insists that the case be dismissed, the prosecutor shall request that a trained advocate from the Victims' Advocacy Specialist's office or other agency counsel the victim, whereas such feelings are often the result of threats, intimidation, coercion, promises to change, apologies, etc. Therefore, cases shall not be readily dismissed without the presence of compelling reasons.

Following careful evaluation of all evidence, the prosecutor will determine all charges for which sufficient basis exists to pursue prosecution. Only in those cases where the victim's testimony is absolutely essential and there is no other sufficient evidence available to support a prosecution should a case be dismissed.

(E) Trial Preparation.

Trial preparation shall be conducted in light of the possibility that the victim may later refuse to cooperate. The prosecutor will therefore determine the availability and usefulness of police photographs of injuries, medical injuries, children or other relatives in the home, neighbors, 911 tapes, defendant statements to police at the scene or at booking, damage to the premises, police testimony of observations made at the scene and of the victim's emotional state, "excited utterances" and "present sense impression" statements made at the scene, communications from the defendant to the victim after the commencement of the incident, torn clothing, etc.

(F) Sentencing Recommendations.

One of the primary goals of sentencing is to insure that the defendant participates in an approved long term treatment program for batterers. This is to be sought whether or not incarceration is involved. Fines should rarely be sought in domestic violence cases in that such

cases usually involve an ongoing relationship or support order. A fine levied on the defendant may therefore adversely affect the victim.

Incarceration should be sentenced to meet the needs of each particular case:

(1) In those cases where the defendant provides the support for the victim/family, weekends in jail or work release should be considered.

(2) Split sentences and probation allow for increased supervision and monitoring of the defendant.

(3) Incarceration should be considered in light of the victim's request, the seriousness of the crime and past criminal history of the defendant.

Unsupervised conditional releases should be opposed. This situation places primary responsibility for monitoring on the victim. If continued monitoring is needed, supervised probation should be sought.

The victim should not be required to attend any joint counseling sessions.

The victim did not commit a crime and such conditions minimize the seriousness of the crime and improperly penalize and blame the victim for the crime.

All sentences should include at a minimum:

(1) Mandatory completion of a batterer's program;

(2) Protection Order;

(3) Completion of substance abuse treatment program, if evaluation indicates that it is needed or if otherwise required by law.

(4) Restitution for medical bills, damage to property and other expenses.

(G) Violations of Protective Orders and/or Probation.

All violations of a Protective Order shall be prosecuted as criminal contempt. In addition, further charges may be in order depending on the circumstance of the violation.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

## CHAPTER 5

### ELDER ABUSE PREVENTION AND PUNISHMENT CODE

#### Section 501. DEFINITIONS.

As used in this ordinance, unless the context clearly indicates otherwise:

(A) the term "abuse" means the willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caretaker of the basic necessities of life - such as but not limited to food, shelter, clothing, and medical and personal care -which are necessary to avoid physical harm, mental anguish, or mental illness, or any other type of maltreatment. However, no person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment;

(B) the term "elderly" means any person who has attained the age of fifty-five (55) years:

(C) the term "caretaker" means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of competent jurisdiction;

(D) the term "exploitation" means the act or process of using an elder or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so;

(E) the term "physical injury" means bodily pain, harm, impairment, or disease;

(F) the term "mental anguish" means to subject an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior;

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 502. Mandatory Arrest Provision.

(A) An officer shall arrest and take into custody persons whom the officer has probable cause to believe assaulted an elderly person with whom he/she is residing with or has formerly resided with. No warrant is required to make an arrest under this section.

For the purpose of this section: Probable cause is defined as follows: Based on the officer's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault. This mandatory arrest provision means that the victim need not sign a complaint for an

arrest to occur. Further, under the provisions of (a) above, an officer shall arrest under probable cause even though it may be against the expressed wishes of the victim.

(B) An officer shall arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the officer.

Regardless whether or not the person violating the order was invited back into the home, an arrest shall be made. Thus, when the court issues such an order it should inform the excluded party that the court must formally change the order in order for him/her to return to the residence.

(C) An officer shall arrest if there was a threat with a dangerous weapon.

(D) An officer may arrest when responding to a call if the officer has probable cause to believe that the alleged assailant has within the past twenty-four hours placed the alleged victim in immediate fear of bodily harm.

(E) Whenever an officer investigates an allegation of an incident described in (a), (b), (c) or (D) above, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report **to the Prosecutor.**

(F) The officer shall request that the jailer contact an Adult Services Worker, Domestic Violence Specialist and the Department of Social Services immediately following the booking procedure and inform them that an arrest has been made.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 503. Role of the Court in Regard to Mandatory Arrest Provision (Section 2 above).

(A) Anyone arrested under this ordinance shall be held until arraignment.

(B) Prior to the release of the defendant a community volunteer will talk with him/her and discuss the availability of domestic violence groups.

(C) The defendant is arraigned.

(D) If he/she enters a plea other than guilty, an advocate for the victim will assist him/her in the preparation of an order for protection temporarily excluding the other from the home and restraining the defendant from any contact with the victim. If he/she pleads guilty, a pre-sentence investigation is ordered and the victim, either personally or through the Adult Services Worker or Domestic Violence Specialist, communicates his/her concerns to the court.

(E) Sentences for a violation of this ordinance shall be a minimum of six (6) months in jail and a fine of not less than \$500.00, plus court costs.



(F) If alcohol or drugs play a part in the abuse, a chemical dependency evaluation and complete cooperation with any recommendations for treatment made will be ordered.

(G) The assailant shall be ordered to participate in the appropriate domestic violence program and must:

(1) Attend an intake session for evaluation and placement in a group for domestic violence. This will be accomplished by an Adult Services Worker or a Domestic Violence or by a member of another domestic violence program not later than 10 calendar days after sentencing.

(2) Attend a minimum of 12 re-education sessions out of 14 consecutive sessions and attend a minimum of 12 counseling sessions out of 14 consecutive sessions. These sessions will begin immediately following the intake session (see (1) above). The counselor shall submit a record of attendance to the Clerk of Courts. The Clerk of Courts shall maintain a record of attendance.

(H) In cases of failure to comply the assailant may be found in contempt of court, given a jail sentence, and given a choice of completing the program or going to jail again. Failure to attend counseling, violation of an order for protection, or commission of a crime of violence during the order for protection period, will result in immediate review of the case by the court.

(I) Upon any second or subsequent offense offenders shall be sentenced to at least six months in jail not to exceed the maximum penalty. After serving their sentence they must complete the domestic violence counseling as described in (g) 2 above.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 504. Order for Protection.

There will exist an order for protection in cases of elder abuse.

(A) A petition for relief under this section may be made by any family or household member on behalf of himself/herself or on behalf of minor family or household members.

(B) A petition for relief shall allege the existence of elder abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(C) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(D) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(E) The court shall advise a petitioner of the right to file a motion and affidavit and to sue without cost and shall assist with the writing and filing of the motion and affidavit.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 505. Hearing on Application, Notice.**

(A) Upon receipt of the petition, the court shall order a hearing, which shall be held not later than 14 days from the date of the order. Personal services shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that personal services cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

(B) Notwithstanding the provisions of paragraph (a) above, service may be made by one week published notice provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven (7) days after publication. The court shall set a new hearing date if necessary to allow the respondent the five (5) day minimum notice required under paragraph (a) above.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

**Section 506. Relief by the Court.**

Upon notice and hearing, the court may provide relief as follows:

(A) Restrain the abusing party from committing acts of elder abuse.

(B) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner.

(C) Order the abusing party to participate in treatment or counseling services.

(D) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.

(E) Order, at its discretion, other relief as it deems necessary for the protection of a family or household member, including order or directives to the appropriate Seminole Nation tribal official(s). Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 507. Standing Order for Protection.

(A) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant a standing order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

- (1) restraining the abusing party from committing acts of domestic abuse;
- (2) excluding any party from the dwelling they share or from the residence of the other, and from any contact with the victim except by further order of the court.

(B) A standing order for protection shall be effective for a fixed period not to exceed 14 days, except for good cause as provided under paragraph (C) below. A full hearing, as provided by this section, shall be set for not later than seven (7) days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.

(C) When services is made by published notice, as provided under Section 6 (b) above, the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section, the court may extend the standing order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 508. Service of Order for Protection.

Orders are to be served personally upon the respondent by a Light Horseman. If the respondent cannot be located the order for protection will be mailed by certified mail to the respondent's last known address.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 509. Assistance of Public Safety in Service or Execution.

When an order for protection is issued, upon request of the petitioner, the court shall order the Light Horse to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for protection.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

#### Section 510. Right to Apply for Relief.

A person's right to apply for relief shall not be affected by his/her leaving the residence or household to avoid abuse.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 511. Modification of Order for Protection.

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Nothing in this ordinance shall affect the title to real estate.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 512. Copy to Law Enforcement Agency.

An order for protection granted pursuant to this ordinance shall be forwarded by the clerk of courts within 24 hours to the Light Horseman or appropriate law enforcement agency with jurisdiction over the residence of the applicant.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 513. Violation of an Order for Protection.

(A) Violation of an order by a respondent who has had notice of the order for protection is an offense.

(B) A Light Horseman shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated an order for protection, if the existence of the order can be verified by the officer.

(C) A violation of an order for protection shall also constitute contempt of court and be subject to attendant penalties.

(D) In the event of violation of a protection order the mandatory arrest provision, Section 3 (b) et al. above, applies.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 514. Reporting Abuse of Elder; Penalty for Failure to Report.

Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to the Light Horse, Domestic Violence Program

Coordinator, or to a prosecutor of the Seminole Nation immediately. Any person or caretaker who without good cause fails to report abuse or suspected abuse of elders shall be guilty of an offense and upon conviction for a violation of this section shall be sentenced to imprisonment for a minimum of 30 days in jail and to a fine of not less than \$150.00, plus court costs.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 515. Reports.

Any report required to be made under this ordinance shall be made in person and orally to a member of the Light Horse, Domestic Violence Program, or the Prosecutor who shall reduce the report to writing. Once the report is reduced to a written form, it shall be forwarded to the Light Horse for investigation of the allegations made in the report. If the allegations are found to be true the Light Horse shall forward a copy of their report to the Prosecutor who shall take the appropriate court action. If the allegations in the report are without merit the Light Horse shall recommend that the case be closed.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 516. Immunity.

Anyone participating in good faith in making of a report pursuant to this ordinance shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceedings resulting from such report.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 517. Contents of Report.

Any report required to be completed by this Ordinance shall consist of at a minimum:

- (A) name, age and address of elder alleged to be abused.
- (B) name and address of person with legal responsibility for the elder that is the subject of the report if it is other than the said elder;
- (C) name and address of the alleged perpetrator;
- (D) nature and extent of the abuse;
- (E) persons who might have been aware of the abuse;
- (F) date(s) and location(s) of when and where the alleged abuse occurred;

(G) findings and recommendations; and

(H) any other pertinent information known to the person **making the report.**

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 518. Reimbursement.

Any person who is convicted of financial exploitation of an elder, shall be ordered by the Seminole Nation Tribal Court to reimburse the elder in full as a part of any plea bargain, guilty plea, finding of guilty by a judge or jury or nolo contendere plea. If the person has exploited resources other than money from the elder, then the court shall order the exploiter to return the resources immediately or to sign the necessary documents returning the resources to the elder.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 519. Non-Disclosure.

The name of any person who reports suspected abuse as defined in this Ordinance shall not be disclosed to any person unless the person who reported the abuse specifically requests such disclosure or a judicial proceeding results from such report.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 520. Follow-up Assessment.

(A) Follow-up will be done at the end of the mandated 14 week sessions, six (6) months after initial sentencing, and one year after initial sentencing.

(B) Domestic Violence Specialist shall do the assessment and shall forward a written copy of findings to the Clerk of Courts and the Prosecutor. The Clerk of Courts shall place the assessment in the case file.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**

Section 521. Appellate Review.

Appellate Court shall not stay the execution of sentences under this ordinance but may review legal issues under its review powers. EXCEPTION: If the Appellate Court determines that legal grounds exist for review then and only then may it stay the execution of sentence, pending its review. The Appellate Court shall limit its review to questions of law, leaving factual questions to the court of original jurisdiction.

Any person or caretaker who abuses or knowingly allows to abuse any elder is guilty of an offense. Any person or caretaker who is convicted for a violation of this section shall be sentenced to imprisonment for a minimum of six (6) months in jail and to a fine of not less than five hundred (\$500.00) dollars plus court costs.

**[HISTORY: Ordinance No. 2009-05, December 5, 2009;  
Approved by BIA February 2, 2012]**